IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL.

Civil Revision No. 09/2005

M/s Eureka Forbes Ltd.
First Floor, 3, Astely Hall,
Dehradun, Uttaranchal, through its
Company Secretary …… Revisionist

Versus

1. M/s Gurudev Automobile and Agencies
Pvt. Ltd. having its registered Office at
Pritam Castle, Dehradun through its
Director Sri Sanjay Jain.

2- Sri S.M. Joshi S/o Sri C.M. Joshi,
R/o 187, Jugmander Street,
Dehradun receiver of property No.3,
Astley Hall, Dehradun.

3- M/s BnB Associates having its
Office at 35, Rajpur Road,
Dehradun through its Office at 35,
Rajpur Road, Dehradun through its
Sole Proprietor Sri Iqbal Wasu S/o Sri S.Wasu,
R/o 2/2, Curzon Road, Dehradun .. Respondents.

Sri Alok Singh, Senior Advocate, assisted by Ms. Mamta Joshi,
Learned counsel for the revisionist.
Sri L.K. Tiwari, learned counsel for the respondents.

(Hon'ble B.C. Kandpal, J.)

This revision has been preferred by the tenant against the impugned order dated 2-2-2005, passed by the Addl. District Judge/Ist F.T.C., Dehradun, in S.C.C. Case No. 25 of 1998, M/s Gurudev Automobile and Agencies Pvt. Ltd. and others Vs. M/s Eureka Forbes Ltd.

2- Brief facts of the case are that during pendency of Small Causes Court Suit, application 93-C was filed by M/S BnB Associates through its proprietor Iqbal Basu under Order 22 Rule 10 C.P.C. and Section 151 C.P.C. stating therein that the applicants have now become the owner and landlord of the property in question by virtue

of the sale deed dated 3-2-2003 executed in their favour, hence the applicants be impleaded as party in the suit.

3- The court below after having considered the arguments advanced by the learned counsel for the parties, was pleased to allow the application 93-C and directed that the applicants be arrayed as party in the suit. The court below also directed the tenant/revisionist to file the additional written statement, if any.

4- Feeling aggrieved by the aforesaid impugned order, the tenant has preferred this revision before this court.

5- Heard learned counsel for the parties and perused the record.

6- Learned counsel for the revisionist has submitted that in view of Section 109 of the Transfer of Property Act, 1882, the applicant BnB Associates has no right to continue the suit for recovery of past arrears.

7- Learned counsel for the revisionist has also cited the case of **Sheikh Noor and Another Vs. Sheikh G.S. Ibrahim** reported in **(2003) 7 Supreme Court Cases 321** and the case of **Raj Kumar Vs. Sardari Lal and others** reported in **(2004) 2 Supreme Court Cases 601** in support of his contention.

8- On the other hand learned counsel for the respondent has submitted that under the provision of Order 22 Rule 10 C.P.C. the court has only to see the prima facie case for its stisfaction in order to exercise its discretion in granting leave for continuing the suit by or against the person on whom the interest have devolved by assignment or devolution. He has cited the case of **Amit Kumar Shaw and another vs. Farida Khatoon and another** reported in **A.I.R. 2005 Supreme Court, 2209.**

9- Keeping in view the rival submissions advanced by the learned counsel for the parties, I am of the view that the impugned order

passed by the court below, does not suffer with any illegality impropriety or incorrectness.

10- However, the revisionist/tenant is at liberty to take the plea before the trial court at the time of hearing of the case.

11- With the aforesaid observation, the revision is dismissed with a liberty given to the tenant/revisionist, to take the plea during the hearing of the case before the court below.

(B. C. Kandpal, J.)

Dated: 6-12-2006
ISB